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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 MICHELLE MARINO,

4 Plaintiff,

5 v.

16 Cv. 1122 (VEC)

6 COACH, INC.,

7 Defendant.

8 -----x  
9 April 29, 2016  
10 10:00 a.m.

11 Before:

12 HON. VALERIE E. CAPRONI

13 District Judge

14 APPEARANCES

15 CUNEO GILBERT & LADUCA LLP  
16 Attorneys for Plaintiff  
BY: BENJAMIN D. ELGA

17 KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP  
18 Attorneys for Defendant  
BY: AARON H. MARKS  
CYNTHIA M. JORDANO

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1 (Case called)

2 THE DEPUTY CLERK: You are?

3 MR. ELGA: Ben Elga representing the plaintiff.

4 MR. MARKS: Aaron Marks for the defendant.

5 MS. JORDANO: Cynthia Jordano for the defendant.

6 THE COURT: This is a class action for a violation of  
7 the New Hampshire Consumer Protection Act, right?

8 MR. ELGA: As well as common law.

9 THE COURT: So what is the jurisdictional reach of the  
10 New Hampshire law?

11 MR. ELGA: Well, the choice of law for this venue is  
12 going to be the New Hampshire statute because it was purchased  
13 there.

14 THE COURT: It was bought in New Hampshire?

15 MR. ELGA: That's correct.

16 THE COURT: So you're going to want a class of people  
17 who bought things in New Hampshire.

18 MR. ELGA: Right. There is going to be a New  
19 Hampshire subclass and a national class for common law claims.

20 THE COURT: And you think he has got no damage.

21 MR. MARKS: Among other problems, yes.

22 THE COURT: You don't think you're damaged when you  
23 think you're getting a bargain and in fact you're not?

24 MR. MARKS: You have to prove that you have bought  
25 something and it doesn't have the value that you paid for it.

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1 THE COURT: You thought you were getting a \$75 bag for  
2 25; and, in fact, you're getting a \$25 bag for 25.

3 MR. MARKS: There is no damage there.

4 THE COURT: Anybody out there think you're damaged?  
5 You don't want to go to a jury on that, not if you  
6 have any women who have bought bags on the jury.

7 So you're going to move pursuant to 12(b)(6), is that  
8 right?

9 MR. MARKS: Correct. As well as 9(b).

10 THE COURT: So your choice is to either respond or  
11 amend, but you can't do both. I am sure you would know that,  
12 but I like to warn people because sometimes I get both.

13 If he amends, you need to tell me whether you're going  
14 to stand on your papers or redo them. You need to tell me  
15 within one week, if he files an amended complaint, whether you  
16 are going to stand on your papers.

17 What are the parties' views on whether we should  
18 proceed with discovery while we brief the 12(b)(6) and 9(b)  
19 motion?

20 MR. MARKS: Our position is that discovery should be  
21 stayed pending the motion to dismiss.

22 MR. ELGA: Our position is it's a classic fraud and we  
23 have clearly made out the allegations. It will facilitate  
24 settlement to begin discovery immediately.

25 THE COURT: That doesn't go a long way. Essentially,

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1 you're saying you are going to extort him by putting him to  
2 lots of costs.

3 Has this claim survived in any other court?

4 MR. ELGA: Very similar claims have survived in other  
5 courts. I am not 100 percent certain that the manufacturer's  
6 suggested retail price specific breed of this slash-through  
7 pricing fraud has yet been tested, because it's a relatively  
8 new attempt by manufacturers to get around the FTC guidelines  
9 which covers slash-through pricing clearly and explicitly, and  
10 I believe this is a breed of that that is relatively new.

11 THE COURT: I am inclined to stay discovery. Let's  
12 see if you can get past 12(b)(6). If you can, then you can  
13 discover to your heart's content.

14 Is there an amended complaint?

15 Oh, no. I'm sorry. This was my note that you want  
16 many, many, many days to present an amended complaint. So my  
17 view is 30 days is enough. If down the road you discover  
18 reasons that you want to amend your complaint, then you can  
19 move and we will deal with it that way. But to give you 120  
20 days to decide whether to amend the complaint doesn't seem  
21 right. So that will be 30 days.

22 MR. ELGA: As you may be aware, there are several  
23 other overlapping actions.

24 THE COURT: What can you tell me about this California  
25 one that seems to be traveling this way?

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1           MR. ELGA: I can tell you plaintiff's counsel are  
2           conferring and that we would request that you stay the entry of  
3           a case management order until we have had a chance to either  
4           adjudicate or respond to the transfer motion.

5           THE COURT: Do you have any objection to that?

6           MR. MARKS: Staying the case management order?

7           THE COURT: Just not entering a case management order  
8           until --

9           MR. MARKS: I think that makes sense.

10          THE COURT: I'm happy to do that. So I won't enter a  
11          case management order. I will enter a stay of discovery.

12          You're moving to dismiss. Let's set a motion schedule  
13          on that.

14          MR. MARKS: Next Friday will be fine.

15          THE COURT: How long do you want to respond?

16          MR. ELGA: 21 days.

17          THE COURT: That's fine. I will give you more if you  
18          want it.

19          MR. ELGA: Then, I guess, 45.

20          THE COURT: How about a month?

21          MR. ELGA: That sounds good. Thank you.

22          THE COURT: Your response will be due June 3.

23          How long do you want to reply?

24          MR. MARKS: Can I have 20 days?

25          THE COURT: I will give you till the 24th.

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1           So we will stay discovery. I won't enter a case  
2 management plan.

3           That seems to be everything I have got to do.

4           Anything further from you?

5           MR. ELGA: No.

6           MR. MARKS: No, your Honor.

7           We will get back together if and when there is a case  
8 management plan? Very good.

9           THE COURT: Thank you both.

10          MR. MARKS: Initial disclosures?

11          THE COURT: You don't need to make initial  
12 disclosures. Let's just brief the motion to dismiss and see if  
13 the case is going forward.

14          Have a nice weekend everybody.

15          (Adjourned)